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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,111	03/06/2007	**Rolf Neumann**	PHDE030400US	2170

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER	
RAJAN, KAI	
ART UNIT	**PAPER NUMBER**
3769	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/596,111	NEUMANN, ROLF	
	Examiner	Art Unit	
	KAI RAJAN	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 January 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2 - 14, and 16 - 22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-14 and 16-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Examiner acknowledges the amendment filed January 28, 2009.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, Applicant has invoked 35 U.S.C. 112, sixth paragraph by reciting "means for evaluating." However, it is unclear whether "evaluating means" comprises hardware and software, or merely software. If the evaluating means is only software, then there is no further limiting *structure* and the Examiner is unable to formulate a comprehensive search for the limiting *structure* in the apparatus claims. The Applicant is invited to make the record clear as to what *structure* performs the function of "evaluating."

In regards to claim 21, Applicant claims "wherein the evaluating and determining means. . ." however parent claim 13 never recites "evaluating means," and only recites "determining means." It is unclear to the Examiner whether Applicant intends "evaluating means" and "determining means" to correspond to the same exact structure and function. The Examiner suggests Applicant use consistent terminology to avoid indefiniteness and antecedent basis issues within the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3 – 13, 16, and 18 – 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mortara et al. U.S. Patent No. 5,704,351.

Note to Applicant: See previous action for rejection to unaddressed dependent claims, as they are rejected on substantially the same basis.

11. A medical measuring system comprising:

a data device including a display screen for displaying at least one of medical measurement values and graphs (Figure 1 item 16);

at least one mobile measuring apparatus which communicates wirelessly with the data device via a wireless communication signal, the mobile measuring apparatus including at least one sensor for generating a measuring signal indicative of physiological data of a patient, the sensor communicating the measuring signal to the mobile measuring apparatus and the mobile measuring apparatus communicating the physiological data to the data device via the wireless communication signal (Figure 1 item 10, column 4 lines 66 – 67, column 5 lines 1 – 46)

wherein the at least one mobile measuring apparatus signals a quality of the measuring signals generated by the at least one sensor (Column 5 lines 9 – 17), the at least one mobile measuring apparatus signaling the quality of the measuring signals on the basis of an evaluation of one or more of perfusion index, transmission level, interference level, and signal form (Column 5 lines 9 – 43, see also claim 28).

13. A medical measuring system comprising:

at least one measuring apparatus including:

one or more sensors designed to contact a portion of a patient to measure physiological patient data and transfer the measured physiological patient data to the measuring apparatus to be wirelessly transmitted (Figure 1 item 10, column 4 lines 66 – 67, column 5 lines 1 – 46);

an evaluating means for evaluating the measured physiological patient data to determine a quality of the measured physiological patient data (Column 5 lines 9 – 43), and

a signaling means for signaling the quality of the measured physiological patient data (Column 5 lines 18 – 43 display module); and

a measurement display apparatus that displays physiological patient data generated by the one or more sensors, the physiological patent data being wirelessly transferred from the at least one measuring apparatus (Figure 1 item 16);

wherein the at least one measuring apparatus includes a means for determining a quality of the measured physiological patient data (Column 5 lines 9 – 17); and

a means for signaling the quality of the measured physiological patient data (Column 5 lines 9 – 17, see also claim 28).

16. A medical measurement device comprising at least one measurement apparatus including a means for wirelessly transmitting medical data to a remote site, one or more sensors for measuring medical data, and a means for determining and a means for signaling a signal quality of the medical data (Column 4 lines 66 – 67, column 5 lines 1 – 46, see also claim 28).

21. The medical measuring device of claim 16, wherein the evaluating and determining means evaluates the measured medical data for one or more of a transmission level, an interference level, and a signal form to determine the quality of the measured medical data (Column 5 lines 9 – 43 impedance).

22. The medical measuring system of claim 13, wherein the evaluating means evaluates the measured physiological patient data based on at least one of a transmission level, an interference level, and a form of a signal which carries the measured physiological patient data (Column 5 lines 9 – 43 impedance).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortara et al. U.S. Patent No. 5,704,351 in view of Schwarzberg U.S. Patent No. 5,730,143.

In regard to claims 2, 14, and 17, Mortara et al., hereinafter Mortara, discloses indicating the signal strength of a measured signal to a user via a visual indicator (Mortara column 5 lines 18 – 43). Mortara fails to disclose alternatively indicating signal strength acoustically. However Schwarzberg a reference in an analogous art discloses notifying the patient via light or sound (Schwarzberg column 3 lines 63 – 67, column 4 lines 1 – 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to interchange the visual indicator of Mortara with an acoustic indicator, since Schwarzberg discloses the two as interchangeable and both suitable for notifying the patient of important information.

Response to Arguments

The previous Office Action of December 4, 2008 was mistakenly sent as a final rejection. Upon review of the previous action and Applicant's remarks, the finality of the previous action has been withdrawn.

Applicant's arguments have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "measuring impedance while *concurrently* measuring EKG signals," as stated on page 1 of Applicant's remarks) are not recited in the rejected claim(s). Although the claims are interpreted in light of

the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In regards to independent claim 11, the claim recites "signaling the quality of the measuring signals." Mortara et al. discloses "checking the electrical quality of each of the electocardiographic electrode conections to patient . . . by determining the impedance of each of the connections." (Mortara et al. column 5 lines 9 – 11). Under the broadest reasonable interpretation of the claim language in light of the specification, the "impedance of each of the connections" is equivalent to a "quality of the measuring signal." Therefore, the applied prior art is sufficient to reject claim 11 as currently presented.

In regards to independent claim 13, the claim recites "evaluating the measured . . . data to determine a quality of the measured . . . data." The electrical quality test of Mortara et al. determines the impedance of each electrode and displays the resulting data to the user. Under the broadest reasonable interpretation of the claim language in light of the specification, the "impedance of each of the connections" is equivalent to a "quality of the measured physiological patient data," since the impedance level is indicative of the EKG signal being received from each electrode. Therefore, the applied prior art is sufficient to reject claim 13 as currently presented.

Regarding claim 16, Applicant contends that Mortara et al. "makes no suggestion of or an enabling disclosure as to how to determine electrode impedance from the EKG data." The Examiner disagrees with the applicant's position. First, Applicant has claimed (in claim 16) "means for determining and means for signaling a signal quality of the medical data." Mortara et al. disclose "checking the electrical quality of each of the electocardiographic electrode conections to patient . . . by determining the impedance of each of the connections." (Mortara et

al. column 5 lines 9 – 11). "To indicate the electrical quality of each electrode . . .a bar graph showing lead quality is provided to display module." (Mortara et al. column 5 lines 18 – 20). Mortara et al. discloses EKG electrodes (medical sensors that collect medical data), and that the quality of each electrode is determined by the level of impedance in the signal measured in each electrode. Since the signal from each electrode comprises medical data, and impedance is a measure of signal quality, Mortara et al. anticipates each limitation of claim 16 as currently presented. Furthermore, a mere statement alleging that the disclosure of a prior art patent is nonenabling does not satisfy Applicant's burden to overcome the Examiner's prior art rejection. Applicant is directed to 35 U.S.C. 282, stating that "a patent shall be presumed valid." Since measuring impedance values from the electrodes attached to the body is claimed in Mortara et al. (see claim 28), this subject matter is presumed valid and enabled.

Regarding the status of claim 18 in the Office Action of December 4, 2008:

Applicant stated in the reply filed January 28, 2008 that claim 18 was deemed allowable since it was not rejected on art. This is incorrect. Although by typographical error "[claim] 18" was inadvertently omitted from the rejection heading under 35 U.S.C. 102(b) by Mortara et al., the claim has clearly been rejected on page six of the Office Action under Mortara et al. Furthermore the Office Action Summary states "Claim(s) 1 – 20 is/are rejected." A cursory reading of the previous Office Action would plainly recognize the typographical error in the heading of the 35 U.S.C. 102(b) rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAI RAJAN whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/
Examiner, Art Unit 3769

/Michael C. Astorino/
Primary Examiner, Art Unit 3769

March 3, 2009